

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

REBECCA FOSTER,

PLAINTIFF

v.

CIVIL ACTION NO. 1:04CV203-D-A

COMMISSIONER OF SOCIAL SECURITY
JOANNE B. BARNHART,

DEFENDANT

REPORT AND RECOMMENDATION

In an order dated January 4, 2005, the court set a hearing in the above-styled case for May 25, 2005, and directed the plaintiff to submit a brief in support of his entitlement to relief in this matter within thirty (30) days. Plaintiff has had no contact whatsoever with the court since the January 4, 2005, order.

Rule 41(b) provides

For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claims against the defendant. Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

In light of plaintiff's apparent abandonment of her claims in this case, the undersigned respectfully recommends that this case be dismissed without prejudice pursuant to FED. R. CIV. P. 41(b).

The parties are referred to 28 U.S.C. §636(b)(1)(B) and FED. R. CIV. P. 72(b) for the appropriate procedure in the event any party desires to file objections to these findings and recommendations. Objections are required to be in writing and must be filed within ten (10) days of the date of this report and recommendation and "a party's failure to file written objections to the proposed findings, conclusions, and recommendation in a magistrate judge's report and

recommendation within 10 days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court” *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (*en banc*) (citations omitted); *see also United States v. Carrillo-Morales*, 27 F.3d 1054, 1061-62 (5th Cir. 1994) *cert. denied*, 513 U.S. 1178, 115 S. Ct. 1163, 130 L. Ed. 2d 1119 (1995).

Respectfully submitted, this the 24th day of May 2005.

/s/ S. ALLAN ALEXANDER
UNITED STATES MAGISTRATE JUDGE

